

Message Text

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SUBJ: INDUSTRIAL REFORM: NEW LAW AUTHORIZES MINISTRY OF INDUSTRY
AND COMMERCE TO APPOINT INTERVENTOR IN BASIC INDUSTRY
ENTERPRISES. (DECREE LAW 19941).

REF: LIMA A-235, JULY 7, 1972; LIMA A-276, JULY 31, 1972.

1. SUMMARY: NEW LAW PROMULGATED FEBRUARY 20, 1973 AUTHORIZES
MINISTRY OF INDUSTRY AND COMMERCE (MIC) TO DESIGNATE " REPRESENT-
ATIVES" TO FIRMS IN BASIC INDUSTRIES' CATEGORY. LAW CONFERS
UPON REPRESENTATIVE RIGHT OF INSPECTION AND BROAD VETO POWER
OVER MANY COMPANY OPERATIONS. END SUMMARY.

2. MOST RECENT LAW CARRIES INTO EFFECT FIRST PART OF SECOND
TRANSITORY PROVISION OF DECREE LAW 19262 (SEE LIMA A-276),
WHICH DECLARES THAT MIC MAY NAME REPRESENTATIVES TO EACH BASIC
INDUSTRY ENTERPRISE WHICH HAS NOT CELEBRATED A CONTRACT FOR
GRADUAL STATE ACQUISITION OF ONE HUNDRED PERCENT OF FIRM'S EQUITY
BY JUNE 30, 1972. (SEE REFTEL A-235 FOR DECREE LAW ON STATE
PURCHASE OF BASIC INDUSTRIES).

3. REPRESENTATIVE HAS AUTHORITY TO: A) PARTICIPATE IN MEETINGS
OF STOCKHOLDERS, DIRECTORS, AND ANY OTHER EXECUTIVE COMMITTEES
OF THE DIRECTORATE OR MANAGEMENT, WITH VOICE AND RIGHT TO HAVE
OBSERVATIONS RECORDED IN MINUTES, B) OBTAIN ACCESS TO ALL
INSTALLATIONS OF FIRM, AND EXAMINE BOOKS, MINUTES, REGISTERS AND
ALL OTHER DOCUMENTATION, C) DISAPPROVE ANY OF ACTS OR CONTRACTS
PROVIDED FOR IN ARTICLE 11 AND PARAGRAPH (A) OF ARTICLE 10 OF
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D. L. 19453, WHICH, IN SUMMARY, INCLUDE: 1) INCREASES OR REDUCTIONS OF CAPITAL, 2) CHANGE OF FIRM'S STATUTES, 3) ISSUANCE OF DEBT OBLIGATIONS, 4) CHANGE OF CLASSIFICATION OF FIRM, 5) MERGER, 6) DISSOLUTION, 7) ALIENATION OF PROPERTY, 8) PURCHASE OF GOODS OR INVESTMENTS NOT REQUIRED FOR NORMAL OPERATION OF FIRM, 9) ACQUISITION OF CERTAIN FOREIGN OR DOMESTIC LOANS, 10) ACQUISITION OF MORTGAGES OR PLEDGES, 11) GRANTING OF GUARANTEES, 12) DESIGNATION OF OUTSIDE AUDITORS, 13) SIGNING, MODIFICATION OR TERMINATION OF MOST CONTRACTS, 14) APPROVAL OF FUTURE CONTRACTS. (FOR FULL DETAILS SEE REFAIR A-235).

4. OTHER PROVISIONS OF LAW PROVIDE A) FOREIGN OR DOMESTIC LOANS IN EXCESS OF AN OVERALL PERCENTAGE FIXED BY THE MIC ARE SUBJECT TO VETO BY REPRESENTATIVE, B) ALL AGREEMENTS OR CONTRACTS IN CONTRAVENTION OF FOREGOING ARE VOID, C) MIC WILL DESIGNATE PRINCIPAL AND ALTERNATE DIRECTORS TO REPLACE REPRESENTATIVES, AND HAVING LIKE AUTHORITY, WHEN NEGOTIATIONS FOR STATE ACQUISITION OF EQUITY COMMENCE, D) ALTERNATE REPRESENTATIVES AND DIRECTORS WILL SUBSTITUTE FOR PRINCIPALS IN THEIR ABSENCE, E) FIRM MANAGEMENT IS RESPONSIBLE FOR MEASURES NECESSARY TO COMPLY WITH D. L. IN MENTION. (SPANISH TEXT OF LAW TO BE POUCHED).

5. EXPRESSED PURPOSE OF TRANSITORY PROVISIONS IS TO " PROTECT THE INTERESTS OF THE STATE". WORTHY OF CONCERN IS IF/ WHEN GOP WILL INVOKE SECOND PART OF SECOND TRANSITORY PROVISION, WHICH DECLARES THAT STATE, THROUGH MINISTRY OF INDUSTRY AND COMMERCE MAY EXPROPRIATE FIRMS WHICH HAVE NOT SIGNED DIVESTMENT CONTRACTS BY JUNE 30, 1972.

6. BASIC INDUSTRIES ARE STEEL PRODUCTION, NON- FERROUS METAL PRODUCTION, BASIC CHEMICALS, FERTILIZERS, CEMENT AND PAPER. MOST FIRMS INVOLVED IN BASIC INDUSTRIES HAVE NOT YET NEGOTIATED AGREEMENTS FOR STATE ACQUISITION OF EQUITY. SOME AMERICAN FIRMS WITH OPERATIONS IN BASIC INDUSTRIES' CATEGORY ARE: W. R. GRACE AND CO., THROUGH ITS AFFILIATES, MORTON SALT THROUGH ITS AFFILIATE QUIMICA DEL PACIFICO, AND SOME OFF- SHOOTS OF CERRO DE PASCO CORPORATION.

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